

May 12, 2015

Objection Reviewing Officer  
USDA Forest Service  
Northern Region  
PO Box 7669  
Missoula, MT 59807

RE: Darby Lumber Lands Watershed Improvement and Travel Management Project – Phase I Environmental Assessment and draft Decision Notice and Finding of No Significant Impact.

Sent Via email to: [appeals-northern-regional-office@fs.fed.us](mailto:appeals-northern-regional-office@fs.fed.us)

Pursuant to 36 CFR 218 regulations, this is an objection to the draft Decision Notice (DN) and Final Environmental Assessment (EA) for the Darby Lumber Lands Watershed Improvement and Travel Management Project – Phase I (hereinafter, “DLL Project”) on the Darby Ranger District, Bitterroot National Forest. The Responsible Official is Forest Supervisor Julie K. King. This objection is filed on behalf of Friends of the Bitterroot.

Friends of the Bitterroot submitted scoping comments on the project and comments on the Environmental Assessment. Please note that Friends of the Bitterroot is party to another objection of this same project along with WildEarth Guardians, who are the lead objectors on that one.

**I. THE USE OF THE 2005 FOREST VISITOR MAP TO DEPICT THE EXISTING TRAVEL MANAGEMENT SITUATION IN THE ENVIRONMENTAL ASSESSMENT CREATES ERRORS IN ANALYSIS.**

The EA's “existing condition” for some roads in the project area does not properly reflect the most recent previous NEPA analyses and decisions affecting those roads, resulting in the “no action alternative” (Alternative A) being a false baseline for the other alternatives. This situation results in the analyses for some resources being out of compliance with the National Environmental Policy Act (NEPA).

Friends of the Bitterroot (FOB) EA comments on this issue included:

The use of the 2005 Forest Visitor Map to depict the existing travel management situation creates errors in analysis. For example, see Table 2.5-1, Project Area Transportation System Before and After Implementing Alternative B, the Modified Proposed Action. (EA p.14) Road Access Status or “R-code” is taken from Forest Visitor Map, which illegitimately changed the status of road access without NEPA analysis. Likewise the statement, “The Bitterroot National Forest’s Visitor Map (2005) displays motorized travel management restrictions, established under current Federal laws and regulations, on National Forest System land.” (p. 25) is false and leads to incorrect analysis and disclosure in the EA.

Finally, regarding EHE calculations, the EHE criterion is misleadingly under-pessimistic as it does not include gated roads, closed to full-sized vehicles, but open seasonally to ATVs and/or motorcycles. We believe the 2005 Travel Map illegitimately opened many of these gated roads to ORVs, without any NEPA. As recent research cited above notes, ORVs are equally disturbing to elk as full-sized vehicles. When you include the ORV-seasonal road prisms, the EHE is worse than indicated. We disagree with the FS that these closed system roads are not roads, but trails. They are system roads, and to imply otherwise is disingenuous. The public would find the FS's confusing interpretation to lack reason or legitimacy.

FOB also included an entire section in their EA comments discussing this issue, entitled "Existing Management Conditions" and stated therein:

(T)he 2005 Visitor/Travel Map is inaccurate and illegitimate. The existing condition relating to travel management is not the 2005 Travel Map on which certain roads that were historically closed to motorized use are depicted as opened seasonally to OHVs. That covert Decision by fiat was done without proper NEPA analysis. The purposes and function of historic road closures were explicitly for watershed and wildlife resource protection and were presumably analyzed on a site specific basis as each road was closed. The "OHV Opportunity" spreadsheet<sup>1</sup> and subsequent 2005 Travel Map opened roads to seasonal use that had been closed yearlong to motorized use. The opening was done without site specific analysis, was unsupported by science and made an arbitrary distinction, in certain cases, between impacts of full-sized vehicles and OHVs. At least one such road is included in the proposed project; more may be included. The existing travel management condition is that situation prior to the illegitimate "OHV Opportunity Spreadsheet" and 2005 Travel Map.

FOB's EA comments mentioned specific NEPA decisions that resulted in closed roads, which the 2005 Forest Visitor Map designated as open to motorized uses:

On page DLL EA, app A, Table A-5, The Burn Road, (FDR 1392) shown to have an "Existing Travel Mgmt Designation" of R-4. However, DLL PF TRANS-6 map indicates that FDR 1392 "existing conditions" is "Closed". We believe the existing travel management condition is: The White Stallion Final Environmental Impact Statement (FEIS) which noted that road #1392 was constructed/authorized under the Upper Sleeping Child EA in 1983 (White Stallion FEIS at App. A-3). The White Stallion FEIS shows that road #1392 (also called "the burn road") is closed and that closure means closed to *all* vehicles from June 15 through November 30, and open only to snowmobiles from December 1 through June 14 (White Stallion FEIS at II-10 – II-11; IV-21; III-7).

Apparently in anticipation of still vague DLL Phase II, Map TRANS-6 indicates the "Existing Condition" is R-4 for Roads 13216 and 13217. The 2005 Travel Map also shows these as code 4 roads, open seasonally to vehicles <50". However, the 1988 Lairdon Gulch Timber Sale Decision Notice and Findings says, "New system roads in the vicinity of Cold

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<sup>1</sup> The OHV Opportunity spreadsheets for each BNF ranger district are incorporated within this Objection and are being submitted as part of the Objection.

Spring Hill would be closed to public use year-round, except for temporary openings during dry periods to allow fuelwood gathering.” Roads 13216 and 13217 are “new roads” built by the project on Cold Spring Hill.

The Forest Service failed to respond to these comments, specific to the above-mentioned roads. It appears the agency believes it has the authority to selectively “forget” commitments made under previous decisions, without further analysis. FOB comments also stated:

In response to Rebecca Smith’s FOIA, dated 9/29/07, regarding the “OHV Opportunity Spreadsheet” and 2005 Travel Map, the FS stated for twenty five of the sixty five roads listed, that the management decision that originally “closed” (i.e. gated) the road was “unknown.” For every single one of the 59 roads listed that were constructed after the passage of NEPA, the FS claimed it had “no data” on what Decision authorized construction of the road. In response to this institutional amnesia the BNF defaulted to opening roads to OHV use seasonally wherever they could not locate documentation of the original closure, yet the roads involved had been closed and often gated yearlong for resource protection, presumably using site specific analysis. This default ignores the originally determined need and action for resource protection, as evidenced by the gates, which required ground disturbing action; it clearly shows bias against resource protection and bias for expanding motorized recreation, and it is arbitrary and capricious.

When the public has better records on road closures on national forest land than the managing agency, then the agency's claim to legitimacy as an authority on what the status of those roads ought to be is rightfully questionable. On this very topic, Smith, 2007 stated, “Without knowledge of the governing NEPA documents, it is ...impossible to determine what the scientific justification is for current road management prescriptions. This lack of accountability leads to public mistrust, as well as the potential for management choices that violate legal guarantees made in NEPA processes.”

**Remedy:**

1. Insure that the status of FSR 5610 under the upcoming DLL Project decision is consistent with the status of FSR 5610 following from the BAR Settlement Agreement.
2. Set the status of the Burn Road (FSR 1392) under the upcoming DLL Project decision as closed to all motorized uses.
3. Set the statuses of FSR 13216 and FSR 13217 under the upcoming DLL Project decision as closed to all motorized uses, consistent with the 1988 Lairdon Gulch Timber Sale Decision.
4. Under the upcoming DLL Project decision, close to all motorize uses each of the other roads in that list of the 59 roads (which were constructed after the passage of NEPA and for which the Forest Service claimed it had “no data” on what Decision authorized construction of the road), until further NEPA analysis shows no harm would ensue from motorized use.
5. The BNF should include, as part of its new travel management plan, a requirement for the creation of a road restriction database. The database should organize information by

road number, and include the names and dates of the NEPA decision documents that make travel management decisions for each road. For each road, the database should also include a brief description of the management prescribed by the most recent NEPA decision document. The new travel plan should also include a requirement that land managers update the road restriction database every time a NEPA decision is made.

## **II. FAILURE TO FULLY ANALYZE ALTERNATIVES THAT ARE BASED UPON THE BEST AVAILABLE SCIENCE AND MEETING THE FOREST PLAN ELK HABITAT EFFECTIVENESS STANDARD FOR ELK.**

FOB comments stated, “the addition of a motorized OHV trail loop system within the project area will negatively impact ...elk habitat and is contrary to the primary stated purpose and need in the EA.” FOB also stated:

Despite the DLL project originating with the membership-diverse and collaborative BRC, the FS failed in providing an alternative that improved elk habitat and hunting opportunities for both archery and rifle seasons...

A restoration-only option would do even a better job at improving elk habitat and create less motorized disturbances to elk, thereby decreasing the tendency for motorized-related elk mortality and movement by elk onto private lands, notably the CB Ranch. This would improve hunting opportunities and help the local economy.

FOB comments also stated:

A principle reason for the acquisition of DLL was to protect and enhance crucial elk habitat. The area is within a critical elk migration corridor, provides important elk winter range at lower elevations, and is home to a significant elk herd. The area was a prioritization for groups who participated in the acquisition working group, like RMEF, Ravalli County Fish and Wildlife Association, and MT Fish, Wildlife, and Parks. Unfortunately, the EA’s Proposed Alternative B fails to improve elk habitat and hunting opportunities for both archery and rifle seasons as FOB and Guardians had recommended in our scoping comments.

While the one Forest Plan standard for Elk Habitat Effectiveness (EHE) marginally improves with Alternative B, three of the other four elk evaluation criteria used in the EA worsen. It is these other criteria that are more relevant to the proposed action, and provide a more comprehensive evaluation. The EA recognizes the shortcomings and inadequacy of the EHE criterion, especially in regards to the motorized recreation component proposed in the DLL project. For the EHE is based only on motorized open roads and not motorized trails. The EA describes the inherent weakness of the EHE when referencing “A number of recent studies have further documented that off-road vehicle use evokes similar responses in elk.” (page 72) This is why the EHE Index is a better evaluation tool and should be given more weight in devising a proposed action, despite it not being a Forest Plan Standard. While the EHE Index

improves in some drainages with Alternative B, “Overall, these changes appear to be negative for elk because they would increase the risk of disturbing elk on their summer ranges. This could exacerbate the existing tendency for elk to spend a majority of the year on private land winter ranges.”(page 76) ...

...Additionally, the presumed minor impact to elk with Alternative B is predicated on a negligible increase in motorized use in the project area. As described elsewhere in these comments, there is no substantiation for this claim—it is arbitrary and capricious. It is reasonable to expect a significant increase in motorized use, which would aggravate the already deleterious effects on elk described in the EA.

In serving the motorized recreational portion of the DLL Project's purpose and need, which FOB has consistently objected to, the Forest Service fails to adequately address the needs of big game species, as represented by elk—a much more substantial purpose and need of the DLL Project. The draft DN discloses that the proposed action alternative would make only marginal gains towards meeting non-amended forest plan standards and other indicators for elk:

When evaluating the effects of not meeting EHE, I considered the analysis discussed in Section 3.5.7 of the EA. In this section, our wildlife biologist completed additional analysis using an elk habitat effectiveness index that considers motorized traffic on both roads and trails and assumes that all motorized vehicles have similar effects on elk. This analysis showed that the existing EHE Index is less than desired in 11 of the 13 drainages in the project area, but that Alternative B would improve Index values in 9 drainages. This would improve habitat effectiveness for elk in some portions of the project area. (EA Section 3.5.7). The EHE Index is not used to measure compliance with a Forest Plan standard like EHE, but provides another method of comparing the effects of motorized use in the alternatives. Of the five analysis methods used to evaluate project effects to elk, three show improved conditions for elk, and the other two showed no change (*Ibid*). ...It will improve EHE in five drainages that do not currently meet the standard but not enough to bring them into compliance with the standard.

The EA also utilizes Hillis et al. (1991) concerning elk security. Hillis et al. (1991) was not available during Forest Plan development and thus “new information” as part of “best available scientific information.” The EA states:

This analysis shows that the existing amount of elk security area in the surrogate elk herd unit formed by the larger DLL project area is far below the 30% minimum level recommended by Hillis et al. (1991). This is due to high open road and trail densities in some areas, combined with a lack of cover throughout most of the area. The lack of cover within the DLL project boundary is a result of previous regeneration harvest on both BNF and former Darby Lumber Company lands combined with high severity fire that occurred during 2000. The amount of security area during the rifle season would be the same under both alternatives.

...This Security Area Index analysis shows that there is currently very little elk security area within the DLL project area during the archery season.

The EA also utilized other scientific references to analyze elk security:

To analyze the general effects of motorized routes on elk outside the hunting season, a ½ mile buffer was applied to either side of each route open to motorized use during the summer. This buffer width was selected because several studies indicate that elk select for areas greater than ½ mile away from open roads (e.g. Lyon 1983, USDA Forest Service 1982). Other studies have shown that elk may be influenced by ATV travel on off-road transects more than 1500 meters away from the transect (e.g. Wisdom et al. 2004), so a ½ mile buffer width is conservative.

Using those references, the EA discloses:

This Core Security Area analysis shows that there is currently very little elk core security area within the DLL project area during the summer. This is due solely to the high density of roads and trails open to motorized use, since cover is not used as a criteria for this analysis. Alternative A would not change the existing condition for Wildlife Core Security Area.

The EA also indicates that implementation of Alternative B would increase the amount of Wildlife Core Security Area within the larger DLL analysis area by a mere 325 acres during the summer.

FOB comments on the EA stated, “Under Issues 1.7.3, the EA states under insignificant issues, ‘The decision may also require a site-specific Forest Plan amendment for the EHE standard for the drainages where the standard is not met after implementing Alternative B. We fail to see how the FS cannot consider EHE as a significant issue.’”

The Forest Service did not properly identify a need to amend the Forest Plan to allow itself to not fully meet the Forest Plan EHE standard, which violates the 2012 NFMA Planning Rule at 36 CFR § 219.13 219.16, and 219.17. The EA also fails to properly document how the best available scientific information was used to in the preparation of the amendments, in violation of the Planning Rule at 36 CFR § 219.14.

The EA failed to fully analyze an action alternative that would not require such amendments, so that the decision maker and public could determine the impacts of unamended forest plan implementation. This violates NEPA. The EA also did not analyze a wide enough range of alternatives to make substantial improvements in habitat security, based on Hillis et al. (1991), Lyon 1983, and USDA Forest Service 1982. This fails to utilize the best available science, in violation of NEPA.

**REMEDY:**

1. Prepare a Supplemental Analysis that analyzes an action alternative that does not need to implement an EHE forest plan amendment and that makes genuine and substantial improvements

in habitat security, in compliance with NEPA's requirements for adequate range of alternatives and utilizing the best available science.

2. Prepare a forestwide plan amendment to replace the EHE road density standard with the EHE Index motorized route density standard.

**III. INCONSISTENCY WITH TRAVEL MANAGEMENT REGULATIONS AND FOREST PLAN ROADS AND TRAILS STANDARDS. The FEIS does not demonstrate project consistency with the Travel Management Regulations at 36 CFR § 212.**

FOB comments on the EA stated:

36 CFR 212.55 requires that the Forest Service consider the availability of resources for the maintenance and administration of the road and trail system. NEPA requires that this consideration be disclosed to the public and based in reality and that the forest's decision must be rational, and not arbitrary and capricious.

The Forest Plan requires that “Roads will be closed to public use if adequate road maintenance funds are not available.” The Forest Plan also requires the agency to “Plan transportation systems to minimize roads crossing or running parallel to streams.”

The draft DN states, “Both the MA-1 designation and public input suggest recreational motorized use is appropriate for most of the project area.” As if the Forest Service has no discretion to manage providing higher priority to watershed conditions and big-game, including elk! The draft DN also states:

The final route system proposed in Alternative B-Final Proposed Action considers the Travel Analysis Process (TAP, Project File ) ...Most of the roads are located in Forest Plan Management Area 1 and 2. The proposed road system in the various Forest Plan Management Areas has been determined to be appropriate for those Management Areas. ...Timber, Fire and Weed control resource specialists have evaluated the road system that will result from Alternative B and found that it does not substantially reduce the access needed to implement appropriate management activities.

However, the process the Forest Service used is not consistent with requirements to involve the public in a science-based Travel Analysis Process, create a Travel Analysis Report, and identify roads likely not needed to manage the forest, as required under the Regulations and in the Directives.

The EA does not disclose the Project Area Road Management Objectives, which would be developed using the Travel Management Regulations.

Within this Objection, we incorporate WildEarth Guardians August 29, 2014 letter to the BNF, concerning travel analysis (36 CFR § 212 Subpart A) to identify “an appropriately sized and

environmentally sustainable road system that is responsive to ecological, economic, and social concerns.” (Deputy Chief Leslie Weldon March 29, 2012 memo.) That letter is included as Attachment 1.

The DLL Project EA does not incorporate the required science-based transportation analysis, and so there was no assessment that identified the unneeded roads. The TAP was not science based, was not completed in compliance with subpart A nor the related guidance documents in the FSM and FSH.

The Bitterroot National Forest has not yet completed its forestwide Travel Analysis Process (TAP) as mandated by the Travel Management Regulations. Since the TAP is to be a science-based process, WildEarth Guardians Travel Analysis letter to Forest Supervisor King cited scientific information including Wisdom, et al. (2000):

Our analysis also indicated **that >70 percent of the 91 species are affected negatively by one or more factors associated with roads.** Moreover, maps of the abundance of source habitats in relation to classes of road density suggested that road-associated factors hypothetically may reduce the potential to support persistent populations of terrestrial carnivores in many subbasins. Management implications of our summarized road effects include the potential to mitigate a diverse set of negative factors associated with roads. **Comprehensive mitigation of road-associated factors would require a substantial reduction in the density of existing roads as well as effective control of road access in relation to management of livestock, recreation, hunting, trapping, mineral development, and other human activities.**

**...Efforts to restore habitats without simultaneous efforts to reduce road density and control human disturbances will curtail the effectiveness of habitat restoration, or even contribute to its failure; this is because of the large number of species that are simultaneously affected by decline in habitat as well as by road-associated factors.**  
(Emphases added.)

The EA fails to demonstrate compliance with Forest Plan Standards, in violation of the Forest Plan and NFMA. The EA violates the Travel Management Regulations at 36 CFR § 212 subpart A. It also violates NEPA by failing to use the best available science, and by failing to disclose project inconsistency with the Travel Management Regulations.

Because the EA's and project level TAP's analyses was not based upon a proper minimum roads analysis as per subpart A, and thus failed to consider the affordability of the motorized route system, it also failed to consider the impacts that would occur because of the lack of sufficient annual funding for maintenance. The EA also failed to analyze the implications of insufficient enforcement of closures worsened by the proposed increases in motorized trails systems, which would not be patrolled as readily as roads.

## **REMEDY:**

1. Complete the forestwide science-based Travel Analysis Process (TAP) as required by regulations.
2. Prepare a Supplemental Analysis that incorporates the completed forest-wide TAP and includes alternatives that implement the minimum road system, and that complies with Forest Plan Standards.

**IV. FOREST SERVICE IMPROPERLY INCLUDES TRAVEL PLANNING WITH THIS PROJECT INSTEAD OF CONDUCTING THE ANALYSIS AND MOTORIZED DESIGNATIONS UNDER THE CONCURRENT FORESTWIDE TRAVEL MANAGEMENT PLANNING PROJECT.**

FOB comments on the EA stated:

The DLL scoping notice (12/11/13) states, “This [project] area was purposely not analyzed in detail for the Forest-wide Travel Management Planning project”. The Forest-wide Travel Management Planning project is concurrent with this project. There is no good reason to separate the two and many good reasons that any proposal should properly emanate from and be a part of Forest-wide travel planning. BNF officials state that the Travel Plan is due out any day now. It is clear that this project, with a major travel management component, would benefit from being viewed in a larger context. A Forest-wide analysis of the need and opportunities for OHV loops is necessary to rationally justify this project and to determine: 1) if there is actually a “need” for OHV loops, 2) if opportunities to satisfy the purported “need” are already available elsewhere, possibly minimizing the added resource damage and expense of new road building, 3) if less risky opportunities exist elsewhere without the extreme dust hazard to human health and stream sedimentation, 4) if opportunities exist outside the proposed highly damaged watershed with its exceptional fisheries values, and 5) if opportunities exist in areas less critical to elk and with less inherent risk to loss of elk hunting opportunity and elk management ability. There are already many hundreds of miles on the BNF open to OHVs, much of the mileage is open exclusively to OHVs and motorbikes.

By improperly piecemealing the DLL Project separate from forestwide travel planning, the Forest Service violates NEPA.

**Remedy:**

Incorporate the DLL Project and project area into the forestwide Travel Planning EIS.

**V. FAILURE TO PROPERLY ANALYZE AND ADDRESS MOTORIZED IMPACTS TO WILDERNESS CHARACTER OF THE SLEEPING CHILD INVENTORIED ROADLESS AREA.**

FOB's comments on the EA stated:

The EA states, under 2.7.4, "The IDT and Ranger considered this option during the alternative development process, and ended up emphasizing a lower level of motorized access in the upper Sleeping Child watershed, which complements the existing Sleeping Child Inventoried Roadless Area character." We are not able to determine how this was done, and ID Team notes are not available. Tr. 104 is still designated, parts of which are within the IRA and it connects to Tr. 500 that leads down to Tr. 84 along Sleeping Child Creek. Tr. 104 meets roads above Tr. 500, so there is full size vehicle access at this point and an area to park. There is no evidence that roadless characteristics were a focus of this analysis, or that motorized access was decreased, or maintained at a "lower level" in this watershed.

The Forest Service responded, "Section 2.7.1 in the draft EA discusses the OHV club (RCORUA) proposal for the project area. Text has been added to the EA to clarify the request and response of the BNF to additional trails in the upper Sleeping Child watershed."

The Forest Service response does not respond to the issue of respecting Wilderness character of the Sleeping Child IRA, in violation of NEPA.

**Remedy:**

Designate Trails 84, 500, and 288 as non-motorized as part of the upcoming Decision. Close the Burn Rd to all motor vehicles yearlong.

**GENERAL REMEDY:**

The Forest Service must design a law enforcement plan to deal with the inevitable violations of motorized vehicle closures in the DLL Project area. The law enforcement plan must contain a threshold of levels and frequencies of violations which—when exceeded—will result in complete closure of the adjoining trails to all motorized vehicles.

Respectfully submitted,

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**Literature Cited**

Smith, Rebecca K., 2007. Legal Issues Relevant to Current Off-road Vehicle Management on the Bitterroot National Forest. University of Montana, December 2007.

Wisdom, Michael J.; Richard S. Holthausen; Barbara C. Wales; Christina D. Hargis; Victoria A. Saab; Danny C. Lee; Wendel J. Hann; Terrell D. Rich; Mary M. Rowland; Wally J. Murphy; and Michelle R. Eames. 2000. Source Habitats for Terrestrial Vertebrates of Focus in the Interior Columbia Basin: Broad-Scale Trends and Management Implications. General Technical Report PNW-GTR-485 United States Department of Agriculture Forest Service Pacific Northwest Research Station United States Department of the Interior Bureau of Land Management General Technical Report PNW-GTR-485. May 2000.